WA 467/2003
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY
THE HON'BLE MR. JUSTICE MUTUM BK SINGH
JUDGMENT AND ORDER (ORAL)
AMITAVA ROY , J
The appellant before us, having unsuccessfully challenged his dismissal from service as a disciplinary measure, is in appeal being aggrieved by the judgment and order dated 28.08.2003, passed in W.P.(C) No. 1355/1999.

2. We have heard Mr. TJ Mahanta, Advocate assisted by Ms. P Bhattacharjee, Advocate for the appellant and Ms. G Singh, learned Central Government Counsel, for the respondents.

3. The facts in short leading to the filing of the writ petition as narrated therein, are essential to be noticed. The appellant, while deployed as a sentry with the Central Reserve Police Force (hereinafter also referred to as the 'Force'), being attached to HQ/76 BN CRPF Halmira, Golaghat, was charged in a criminal case being Golaghat P.S. Case No. 257/1997 under section 379 IPC, following a complaint of theft of a VIP suitcase lodged by one S.I. T.B. Hazari, 76 BN CRPF of Jonaki Nagar. The appellant as a consequence thereof, was arrested and remanded to judicial custody on 26.07.1997 and was released on bail on 14.08.1997. On his release however, the appellant went to his native home at Perumuchi, Tamilnadu, to get over the shock and disappointment without informing the respondent authorities. After returning to his place of service, he was seriously intimidated by his colleagues and was warned against resuming his duties. In these circumstances, he took shelter in a rented house in village Islampur under Merapani police station in the district of Golaghat.

4. By that time, the charge sheet in the above police case, had been submitted and the trial began, in which he appeared in the Court below. Situated thus, he was dismayed on being served with the order dated 27.05.1998, dismissing him from the service of the Force. He came to learn thereof on receiving the letter being redirected from his home address in Tamilnadu. According to the appellant, he had neither been informed of the disciplinary proceeding, culminating in his dismissal nor served with any notice in connection therewith. The order of dismissal was passed in an exparte inquiry. The appellant thereafter, in the month of June, 1998 made an application to the Commandant 76 BN CRPF Halmira, Golaghat for a reconsideration of the decision, asserting that he had not been intimated of the disciplinary proceeding earlier. His application, however, remained unresponded. He forwarded the details through another letter dated 07.01.99, addressed to the same authority, which also remained unattended. He thereafter approached this Court.

5. The respondents in their counter, while endorsing the decision taken, admitted the facts with regard to the appellants criminal case, his arrest and release on bail on 14.08.1997. The answering respondents pleaded that thereafter, he did not report for duty and eventually a warrant of arrest was issued on 30.08.1997, by the Chief Judicial Magistrate-cum-Commandant 76 Bn. CRPF, which was addressed to the SP North Arcot (Tamilnadu) and Golaghat (Assam) for his apprehension. As the same remained also unexecuted, a Court of inquiry was ordered on 13.10.1997 and inspite of several correspondences in connection therewith, the appellant could not be intimated thereof. He was by order dated 19.12.1997, declared a deserter under Rule 31 (c) of CRPF Rules, 1995 (hereinafter for short as 'Rules').

6. The respondents further averred that a departmental inquiry was thereafter, launched and the memorandum of charge dated 23.12.1997, was sent to the appellant at his home address in Tamilnadu. Thereafter, in the said proceeding as well, notices thereof, were issued to him at the said address, but he did

not respond to the same. The proceeding was thereafter taken exparte and on co mpletion of the departmental enquiry, the decision of the disciplinary authority , was also dispatched to his home address. He was also intimated of his right t o adduce evidence on his behalf. As these efforts failed as well and finally th e order of dismissal was passed on 27.05.1998. While asserting that the impugne d action had been taken in accordance with the Central Reserve Police force Act, 1949 (hereinafter also referred to as the 'Act') and the Rules framed thereunde r, the respondents have questioned the maintainability of the writ petition on t he ground of non-exhaustion of the alternative remedy available under Rule 28. The learned Single Judge on a consideration of the pleadings of the parties held the view that in the attending the facts and circumstances, the appellant havin g failed to report for his duty on his release on bail, the respondent authoriti es could not be faulted for sending the notice to his home address in Tamilnadu. The learned Single Judge was of the opinion that the appellant himself was res ponsible for the exparte conduct of the disciplinary proceeding. In that premis e, the plea of violation of the principles of natural justice was negated. The findings of the inquiry officer and the conclusion of the disciplinary authority on merits as well, were sustained. The writ petition accordingly was dismissed .

7. The only point debated before us by Mr. Mahanta, is that the dis ciplinary proceeding and the order of dismissal are vitiated by the vice of unfa irness, inasmuch as no notice of any kind pertaining thereto, had ever been serv ed on the appellant. According to the learned counsel, as the appellant was thr oughout present in Court course of the trial of the criminal case, the plea that he could not be served with the notice of the disciplinary proceeding inspite o f best endeavours, is unbelievable. According to Mr. Mahanta, the learned Singl e Judge having left out consideration the above factual aspect, the impugned jud gment is unsustainable in law and ought to be interfered with in the interest of justice. Mr. Mahanta in support of his submission has placed reliance of the A pex Court decisions in (1998) 7 SCC 569 (UNION OF INDIA & ORS. Vs. DINANATH SHAN TARAM KAREKAR & ORS), AIR 1961 SC 1158 (BATA SHOE CO. (P) LTD. Vs. D.N. GANGULY & ORS.) and of this Court in 2004 (SUPPL.) GLT 230 (RABIN CHANDRA BHUYAN Vs. UNI ON OF INDIA & ORS.) and 2003 (3) GLT 180 (SHYAMAL KR. DAS Vs. STATE OF TRIPURA & ORS.).

8. In reply, Ms. Singh, has strenuously urged that the appellant ha ving deliberately absented himself from duty without any reasonable cause and he having provided his permanent address in Tamilnadu, the action of the responden t authorities in attempting to notify him of the pendency of the disciplinary pr oceeding at that address is in sufficient compliance of the requirement of fairn ess in action. As the respondent authorities inspite of all possible endeavours had failed to intimate the appellant about the proceedings because of his consc ious attempts to play truant, the view taken by the learned Single Judge on an a ssessment of the attending facts and circumstances of the case, is logical and r easonable and does not merit interference in this appeal. Ms. Singh, has furthe r urged that the appellant's continuous absence from duty impelled the responden t authorities to initiate a proceeding to declare him a deserter under Rule 31 o f the Rules. In that proceeding as well, the appellant intentionally remained a bsent. The warrant of arrest also remained unexecuted. In the above view of the matter, according to the learned Central Govt. Counsel, the plea of violation o f the principles of natural justice, vis- -vis the appellant, being wholly unsus tainable in law, no case has been made out warranting interference with the impu gned judgment and order. Ms. Singh, pressed into service the decisions of the A pex Court in AIR 1971 SC 40 (UNION OF INDIA Vs. J.N. SINHA & ANR..), AIR 1970 SC 10 (A.K. KARAIPAK & ORS. Vs. UNION OF INDIA & ORS.). She also produced an extr act of the relevant official records for the perusal of the Court.

9. The rival submissions have been carefully evaluated. The admitt ed facts at the cost of repetition, are that the appellant was arrested in conne

ction with Golaghat P.S. Case No. 257/1997 under section 379 IPC and was released on bail 14.08.1997. He had in the meantime, been placed under suspension on 26.07.1997. He did not resume his duties thereafter and claims to have been residing at Islampur in the district of Golaghat. By that time, the trial in the criminal case had commenced. The respondent authorities having failed to locate his whereabouts and take necessary action against him for his continuous absence initiated a proceeding under the Rules to declare him a deserter and eventually the order to that effect was passed. The appellant did not participate in the said proceeding as well. Immediately, thereafter, the memorandum of charge against the appellant was issued on 23.12.1997. The allegation levelled against him reads as follows: -

That said No. 850846035 CT. G. Annadurai of F/76 BN, CRPF while functioning as Constable (GD) in this unit, committed an act of misconduct as a member of the force under section 11 (1) of the CRPF Act, 1994, in that he absconded and is still absconding from the same date which is prejudicial to the good order and discipline of the force .

10. The records produced before us disclose that the notices of the proceeding were thereafter issued to the appellant at his home address at Village Adidravida, Perumuchi, Paynipet, in the district of North Arcot, Tamilnadu on 24.01.1998 and 10.02.1998 by the inquiry officer, asking to him to file his written statement and to present himself in the departmental proceeding. The copies of the notices available in the records suggest that those were sent by registered post. There is however no evidence to establish that the said notices with the memorandum of charge had been served on the appellant. It is not the case of the respondents that thereafter any further attempt was made by them to notify the appellant of the proceeding either by sending fresh notices or by publishing the fact of pendency of the disciplinary proceeding in any newspaper of wide circulation, so as to ensure intimation thereof to the appellant. The proceeding thereafter proceeded exparte. The records disclose that the inquiry officer before submitting his report sent two notices on 03.03.1998 and 06.03.1998 at the appellant’s address in Tamilnadu asking him to produce his service in defence, the same also remained unserved. The inquiry officer thereafter submitted his report on 22.03.1998. As the records reveal by communication dated 25.03.1998, issued by the Commandant of the concerned Battalion, a copy of the inquiry officer’s report had been forwarded to the appellant at his home address in Tamilnadu. The records disclose that the same was served on him there. The order of dismissal was passed thereafter on 27.05.1998.

In all therefore, the records produced before us do not demonstrate that the inquiry officer’s report had been served on the appellant. In order to further satisfy ourselves, we had required the learned Central Government Standing counsel to produce the original records in full to ascertain as to whether further steps had been taken in addition to the above, to intimate the appellant about the pendency of the proceeding. The records have not been produced inspite of reasonable opportunities. Therefore, there is no other alternative but to proceed on the basis that the notice of the initiation of the disciplinary proceeding by the memorandum of charge and the pendency thereof, had not been served on the appellant and that the order of dismissal had been passed on the basis of the materials recorded in an exparte hearing.

The disciplinary proceeding admittedly had been initiated and conducted under Rule 27 of the Rules. A plain reading of the said provision makes it explicit that the same has to be proceeded with in the presence of the delinquent. The different stages of the departmental inquiry envisaged therein, establish that the person charged has to be afforded all reasonable opportunities to defend himself against the same. Not only, is he required to be made aware of the imputations but should also to be permitted to participate in the proceedings, so as to effectively represent against the same. We need not dilate further on the procedure, as the same is not in dispute. Suffice it would be to underline that the above provision of the Rules makes it incumbent on the authority concerned to ensure

that the departmental inquiry is conducted in compliance of the principle of fa irness, so that the person charged is extended all procedural safeguards.

11. The Apex Court in UNION OF INDIA Vs. J.N. SINHA & ANR. (Supra) a nd A.K. KARAIPAK & ORS. (Supra), underlined that the principles of natural justi ce are not embodied rules and the applicability thereof, would depend on the fac ts and circumstances of each case and can be permissibly excluded, if a statutor y provision explicitly or by implication mandates such a course. The Apex Court in (1998) 8 SCC 194 (BASUDEO TIWARY Vs. SIDO KANHU UNIVERSITY & ORS), has enoun ced that audi alteram partem, which is a facet of natural justice is a requireme nt of Article 14 and the principle of non-arbitrariness, pervades the entire rea lm of State action by the same constitutional mandate. It held the view that in order to impose procedural safeguards the requirement of natural justice has be en read into a provision, if the statute is silent and an omission to impose a r equirement of hearing in a statute ought not to be taken to exclude the same.

12. In BATA SHOE CO. (P) LTD. (Supra), while dealing with an almost similar situation, the Apex Court ruled that the proper course is, when the regi stered notices carrying the charges to the workmen had remained unserved, to pub lish notices in their names in some newspaper in the regional language with a wi de circulation.

13. In UNION OF INDIA & ORS. Vs. DINANATH SHANTARAM KAREKAR & ORS (S upra), the original respondent (since deceased) was removed from service by way of penalty in a disciplinary proceeding. The charge sheet sent to him by regist ered post had returned with the endorsement not found . The Apex Court in the contextual facts declared that a document sent by registered post would be trea ted to have been served only when it was established that it was tendered to the addressee. The endorsement not found on the registered cover could not be co nstrued to be a service on the addressee. The publication in a newspaper was al so considered to be insufficient in absence of any indication that it had a wide circulation in the area or the locality where the respondent lived. The Apex C ourt quashed the order of penalty holding that as the initiation of the discipli nary proceeding was void, it vitiated all steps subsequent thereto. It laid dow n that when a disciplinary proceeding is intended to be initiated by issuing a c harge sheet, service of its notice is essential as the person to whom it is issu ed, is required to submit his reply and, thereafter, participate in the process. This necessity also subsists when a show case notice is issued, calling upon t he delinquent to represent against the action proposed to be taken. In both the cases, the Apex Court ruled that actual service ought to be established. The a bove view found reiteration in RABIN CHANDRA BHUYAN (Supra) and SHYAMAL KR. DAS (Supra), where this Court held that in situations where serious penal consequenc es ensue, no concept of deemed service on the person affected is entertainable a nd that any failure on the part of the administrative authority concerned in thi s regard would vitiate the resultant action by the contravention of the principl es of natural justice.

14. Having regard to the emphatic and categorical judicial pronounce ments as above, mandatorily requiring the authority concerned to take all possib le steps to notify the person against whom any prejudicial action is proposed as a measure of discipline or otherwise, we are constrained to hold that in the fa cts of the present case, the respondent authorities have lacked to ensure the sa me. Having regard to the mandate of the Rules under which the disciplinary proc eeding had been conducted, it was incumbent on them to ensure that the notice th ereof, was served on the appellant. Though, the records as alluded hereinabove, reveal that the memorandum of charges followed by four notices at different sta ges had been addressed to the appellant at his permanent address, the same were not served on him. The fact that at all relevant times, the trial in the crimin al case was pending at Golaghat, in which the appellant was an accused has not b een disputed before us. The respondents, though, being aware that the notices o

f the disciplinary proceeding had not be served on the appellant at his address in Tamilnadu did not make any attempt to publish the notice of pendency thereof, either in any local newspaper or in any daily with wide publication in his own State. In view of the fact that the trial against the appellant during the pendency of the disciplinary proceeding, was in progress in a Court at Golaghat, in absence of any assertion that he had been on the representation of his counsel, we are constrained to hold that the respondent authorities have failed in their solemn duty of notifying him of the disciplinary proceeding as required under the law.

15. The conduct of a proceeding under Rule 31 of the Rules to declare the appellant a deserter and his non-participation therein, in our view, is of no decisive relevance in favour of the respondents. They having initiated a fresh and independent disciplinary proceeding against him, they were obliged in law to comply with the requirements of Rule 27 of the Rules in its letter and spirit. As it is, the respondents, having been clothed with the power to determine and decide the charge levelled against the appellant to his detriment, they were bound in law to guarantee that the procedure undertaken is in observance of the procedural safeguards prescribed by the Rules. With utmost respect, therefore, we cannot persuade ourselves to uphold the view taken by the learned Single Judge.

16. The initiation of the departmental proceeding against the appellant is thus vitiated by non-compliance of the principles of natural justice and, therefore, all decisions subsequent thereto, are invalid in law. Consequently the order of dismissal dated 27.05.1998, is interfered with. The impugned judgment and order is also set aside.

16. However, having regard to the fact that the appellant at all relevant time had been a member of a disciplined force, we leave it to the discretion of the respondent authorities, if so advised, to pursue the issue afresh. However, in case such a course is decided to be adopted, needless to say the respondent authorities would strictly act in accordance with law. As a result, the appellant would stand reinstated in service. The appellant however would not be entitled to back wages. His other service benefits would remain intact.

17. The appeal stands allowed in the above terms. No costs.